

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TALECRIS BIOTHERAPEUTICS, INC., and
BAYER HEALTHCARE LLC,

Plaintiffs,

v.

BAXTER INTERNATIONAL INC., and
BAXTER HEALTHCARE CORPORATION,

Defendants.

C.A. No. 05-349-GMS

Jury Trial Demanded

BAXTER HEALTHCARE CORPORATION,

Counterclaimant,

v.

TALECRIS BIOTHERAPEUTICS, INC., and
BAYER HEALTHCARE LLC,

Counterdefendants.

REDACTED VERSION DI 290

**DECLARATION OF JACLYN M. MASON IN SUPPORT OF
PLAINTIFFS' OPPOSITIONS TO BAXTER'S MOTIONS *IN LIMINE* NOS. 1-5**

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Redacted Version Filed: May 10, 2007

Date: May 7, 2007

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*Attorneys for the Plaintiffs and
Counterclaim Defendants*

I, Jaclyn M. Mason, declare:

1. I am an associate at the law firm of Connolly Bove Lodge and Hutz LLP in Wilmington, Delaware and one of the counsel of record for Plaintiffs and Counterdefendants Talecris Biotherapeutics, Inc. and Bayer Healthcare LLC. I make this declaration in support of Plaintiffs' Oppositions to Baxter's Motions *in Limine* Nos. 1-5 based on my personal knowledge and the inspection of the documents attached hereto.

2. Attached hereto as Exhibit 1 is a true and correct copy of Jury Instruction 3.13, titled "Willful Infringement", from the Uniform Jury Instructions for Patent Cases in the United States District Court for the District of Delaware (2004).

3. Attached hereto as Exhibit 2 is a true and correct copy of *Engineered Prods. Co. v. Donaldson Co., Inc.*, 147 Fed. Appx. 979, 2005 U.S. App. LEXIS 18828 (Fed. Cir. 2005).

4. Attached hereto as Exhibit 3 is a true and correct copy of *Telcordia Techs., Inc. v. Lucent Techs., Inc.*, No. 04-875-GMS, 2007 U.S. Dist. LEXIS 31960 (D. Del. May 1, 2007).

5. Attached hereto as Exhibit 4 is a true and correct copy of U.S. Patent No. 6,686, 191.

6. Attached hereto as Exhibit 5 is a true and correct copy of pages 21-26 of the January 10, 2007 Opening Expert Report of Dr. Jeffrey V. Ravetch.

7. Attached hereto as Exhibit 6 is a true and correct copy of page 128 from the January 31, 2007 Rebuttal Expert Report of Dr. Terrence Snape.

8. Attached hereto as Exhibit 7 is a true and correct copy of Exhibit B to the January 10, 2007 Expert Report of Dr. Jeffrey V. Ravetch.

9. Attached hereto as Exhibit 8 is a true and correct copy of deposition exhibit TAL168 (BXTR96438-9).

10. Attached hereto as Exhibit 9 is a true and correct copy of deposition exhibit TAL169 (BXTR95143-54).

11. Attached hereto as Exhibit 10 is a true and correct copy of the January 10, 2007 Expert Report of Michael C. Carroll, Ph.D., without exhibits.

12. Attached hereto as Exhibit 11 is a true and correct copy of deposition exhibit BXTR416.

13. Attached hereto as Exhibit 12 is a true and correct copy of deposition exhibit BXTR417.

14. Attached hereto as Exhibit 13 is a true and correct copy of BXTR13139-140.

15. Attached hereto as Exhibit 14 is a true and correct copy of *KSR Int'l Co. v. Teleflex Inc. et al.*, 550 U.S. ___, 2007 U.S. LEXIS 4745 (U.S. Apr. 30, 2007).

16. Attached hereto as Exhibit 15 is a true and correct copy of Plaintiffs' response to Baxter's Interrogatory No. 2 and Plaintiffs' supplemental response to Baxter's Interrogatory No. 2.

17. Attached hereto as Exhibit 16 is a true and correct copy of TAL18347-53, titled "Production Process".

18. Attached here to as Exhibit 17 is a true and correct copy of TAL18537-64, titled "Development of IGIV Treated with Solvent Detergent".

19. Attached hereto as Exhibit 18 is a true and correct copy of TAL122648, an August 14, 1996 letter from Jay S. Epstein, M.D. to Carol Moore.

20. Attached hereto as Exhibit 19 is a true and correct copy of pages 28-29 of the January 31, 2007 Rebuttal Expert Report of Dr. Jeffrey V. Ravetch.

21. Attached hereto as Exhibit 20 is a true and correct copy of the January 31, 2007 Rebuttal Expert Report of Christopher J. Bokhart, without exhibits.

22. Attached hereto as Exhibit 21 is a true and correct copy of pages 25-26 and 91-94 from the deposition of Christopher J. Bokhart.

23. Attached hereto as Exhibit 22 is a true and correct copy of *Acumed LLC v. Stryker Corp.*, No. 2006-1260, 2007 U.S. App. LEXIS 8375 (Fed. Cir. Apr. 12, 2007).

24. Attached hereto as Exhibit 23 is a true and correct copy of *Praxair, Inc. v. ATMI, Inc.*, No. 03-1158-SLR, 2007 U.S. Dist. LEXIS 21589 (D. Del. Mar. 27, 2007).

25. Attached hereto as Exhibit 24 is a true and correct copy of *Innogenetics, N.V. v. Abbott Labs.*, No. 05-C-0575-C, 2007 U.S. Dist. LEXIS 193 (W.D. Wis. Jan. 3, 2007).

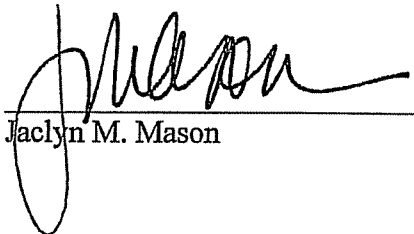
26. Attached hereto as Exhibit 25 is a true and correct copy of *Voda v. Cordis Corp.*, No. CIV-03-1512-L, 2006 U.S. Dist. LEXIS 63623 (D. Okla. Sept. 5, 2006).

27. Attached hereto as Exhibit 26 is a true and correct copy of pages 32-42 of the January 10, 2007 Expert Report of Christopher J. Bokhart.

28. Attached hereto as Exhibit 27 is a true and correct copy of pages 17 and 24 from the January 31, 2007 Expert Report of R. Bruce Den Uyl.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 7th day of May, 2007, at Wilmington, Delaware.


Jaclyn M. Mason

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CERTIFICATE OF SERVICE

I hereby certify on this 7th day of May, 2007 I electronically filed the foregoing **Declaration of Jaclyn M. Mason in Support of Plaintiffs' Oppositions to Baxter's Motions in Limine Nos. 1-5** with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

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I also hereby certify that a true copy of the foregoing document was served upon the following in the manner indicated on May 7, 2007.

<u>Via Hand Delivery and E-Mail</u> Philip A. Rovner, Esquire Potter Anderson & Corroon LLP Hercules Plaza P. O. Box 951 Wilmington, DE 19899 (302) 984-6140 provner@potteranderson.com	<u>Via Federal Express and E-Mail</u> Susan Spaeth, Esquire Townsend and Townsend and Crew LLP 379 Lytton Avenue Palo Alto, CA 94301-1431 (415) 576-0200 smspaeth@townsend.com
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/s/ Jeffrey B. Bove
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